

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TTAB

78 136 103

AMERICAN ITALIAN PASTA COMPANY)
)
Opposer,)
)
v.)
)
BARILLA G. E R. FRATELLI -)
SOCIETA PER AZIONI)
)
Applicant.)
)

Opposition No. 91161373

NOTICE OF RELIANCE UNDER RULE 2.120(j)(3)(I)

Applicant, BARILLA G. E R. FRATELLI - SOCIETA PER AZIONI ("Applicant") hereby give notice to Opposer, AMERICAN ITALIAN PASTA COMPANY ("Opposer") in the above-identified Opposition proceeding of its reliance upon the attached Applicants' Interrogatories and Requests for Admission and Opposer's Responses thereto.

They are identified as Exhibit A1-A11.

- A1 Opposer's Answers to Applicant's First Requests for Admissions
- A2 Opposer's Answers to Applicant's Second Requests for Admissions
- A3 Opposer's Answers to Applicant's Third Set of Requests for Admissions Nos. 15-20
- A4 Opposer's Answers to Applicant's Fourth Set of Requests for Admissions Nos. 21-37
- A5 Opposer's Answers to Applicant's Fifth Set of Requests for Admissions Nos. 38-82




01-12-2007

- A6 Opposer's Supplemental Answers to Applicant's Fifth Set of Requests for Admissions Nos. 38-82
- A7 Opposer's Answers to Applicant's First Set of Interrogatories
- A8 Opposer's Answers to Applicant's Second Set of Interrogatories
- A9 Opposer's Answers to Applicant's Third Set of Interrogatories
- A10 Opposer's Answers to Applicant's Fourth Set of Interrogatories
- A11 Opposer's Confidential Attorneys' Eyes Only Supplemental Answers to Applicant's Fourth Set of Interrogatories (FILED UNDER SEAL)

The responses to Interrogatories and Requests for Admission will be relied on by Petitioners to show that Applicant had a bona fide intention to file this published application, and that Opposer does not have sufficient evidence supporting its claim of acquired distinctiveness.

January 11, 2007

Respectfully submitted,
BARILLA G. E R. FRATELLI -
SOCIETA PER AZIONI

By: 
Brian Banner, Esq
G. Franklin Rothwell, Esq.
Rothwell, Figg, Ernst & Manbeck
1425 K Street N.W.
Suite 800
Washington D.C. 20005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following **NOTICE OF RELIANCE UNDER RULE 2.120(j)(3)(I)** was served on this 12th day of January, 2007, by U.S. Mail postage pre-paid on the following counsel for Opposer:

Thomas H. Van Hoozer, Esq.
Hovey Williams, LLP.
2405 Grand Boulevard
Suite 400
Kansas City, Missouri 64108



Patrick Collares

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**AMERICAN ITALIAN PASTA
COMPANY**

Opposer,

v.

**BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI,**

Applicant.

) **OPPOSITION NO.: 91-161,373**
) **SERIAL NO.:**
) **MARK:**
)
)
)
)
)
)

OPPOSER'S ANSWERS TO APPLICANT'S FIRST REQUESTS FOR ADMISSIONS

REQUEST NO. 1

One definition of the term FAVORITE is "likened or preferred above all others" (quoted from *Webster's II New College Dictionary* (Houghton Mifflin 2001)).

ANSWER

Denied.

REQUEST NO. 2

Opposer's Mark has never been used by AIPC on packaging or advertising where the word MUELLER'S does not also appear in prominent type.

ANSWER

Admitted.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A1 Page 1 of 2

REQUEST NO. 3

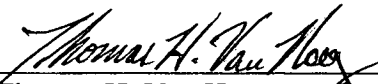
AIPC does not and has not ever promoted Opposer's Mark without reference to the MUELLER'S brand of pasta products.

ANSWER

Admitted.

Dated: October 14, 2004

Respectfully submitted,


Thomas H. Van Hoozer *Reg. No. 32,761*
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2004, I served the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005


Thomas H. Van Hoozer

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A1 Page 2 of 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**AMERICAN ITALIAN PASTA
COMPANY**

Opposer,

v.

**BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI,**

Applicant.

) **OPPOSITION NO.: 91-161,373**
) **SERIAL NO.: 78/136,703**
)
)
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)

OPPOSER'S ANSWERS TO APPLICANT'S SECOND REQUESTS FOR ADMISSIONS

Opposer, American Italian Pasta Company, hereby submits its answer's to Applicant's Second Set of Requests for Admissions. Opposer objects to the "Definitions and Instructions" set forth in Applicant's Second Set of Requests for Admissions to the extent that they impose burdens and obligations on Opposer that are greater than or different from those obligations set forth in the Federal Rules of Civil Procedure, incorporated in the Trademark Rules of Practice, or give meanings to words different than their ordinary English meaning or definitions set forth in applicable statutes or rules.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A2 Page 1 of 5

REQUEST NO. 4

The slogan AMERICA'S FAVORITE PASTA informs the public that pasta products sold under Opposer's Mark are made in the United States as opposed to Italy or other countries.

ANSWER

Denied.

REQUEST NO. 5

The slogan AMERICA'S FAVORITE PASTA informs the public that pasta products sold under Opposer's Mark have been enjoyed by U.S. consumers for many years.

ANSWER

Denied.

REQUEST NO. 6

Opposer has been aware since at least as early as 2001 that Applicant's dry pasta products sold under the trademark BARILLA enjoy a greater percentage share of total U.S. retail sales than dry pasta products sold under Opposer's Mark.

ANSWER

Opposer does not have sufficient information to admit or deny this Request and therefore, denies same. Opposer has made reasonable inquiry and the information known or readily obtainable by Opposer is insufficient to enable it to admit or deny. In particular, there are sales in several markets within the overall U.S. retail markets, which are unknown to Opposer.

REQUEST NO. 7

Attached hereto at Tab A is a true and correct copy of an Affidavit executed by AIPC's

President and Chief Executive Officer dated November 13, 2002 and filed with the U.S. District Court for the Western District of Missouri in 2002.

ANSWER

Admitted.

REQUEST NO. 8

Attached at Exhibit "E" to the Affidavit at Tab A is a true and correct copy of packaging authorized and/or utilized by AIPC for dry pasta products sold under Opposer's Mark since at least as early as 2002.

ANSWER

Admitted.

REQUEST NO. 9

AIPC does not make any claim in the advertising, packaging or promotion of its products that the Mueller Brand is the Number #1 selling brand of dried pasta.

ANSWER

Admitted.

REQUEST NO. 10

The representation in the Affidavit at Tab A that U.S. consumers associate the Mueller's Brand with American as opposed to Italian pasta products is true and accurate.

ANSWER

Admitted.

REQUEST NO. 11

The representation in the Affidavit at Tab A that "Mueller's is perceived as the quintessential,

all-American brand for dried pasta" is true and accurate.

ANSWER

Admitted.

REQUEST NO. 12

The public association of the Mueller's Brand with the facts attested to in the Affidavit at Tab A, Paragraph 13 are true and accurate.

ANSWER

Admitted.

REQUEST NO. 13

The statement quoted in the Affidavit at Tab A, Paragraph 17 is still in use on packaging of AIPC's pasta products sold under Opposer's Mark.

ANSWER

Admitted.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A2 Page 4 of 5

REQUEST NO. 14

Since at least as early as 2002, Opposer has used the slogan AMERICA'S FAVORITE PASTA together with a "flag" design to reinforce that pasta products sold under Opposer's Mark are manufactured in the U.S.

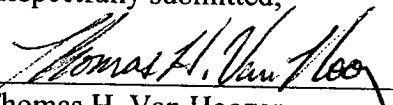
ANSWER

Denied.

AMERICAN ITALIAN PASTA COMPANY

Dated: March 21, 2005

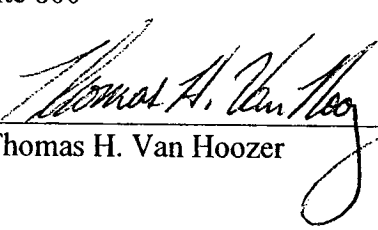
Respectfully submitted,


Thomas H. Van Hoozer
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2005, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S SECOND SET OF REQUESTS FOR ADMISSIONS by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005


Thomas H. Van Hoozer

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A2 Page 5 of 5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA)	
COMPANY,)	
)	Opposition No. 91161373
Opposer,)	
)	
v.)	
)	
BARILLA G. E R. FRATELLI-SOCIETA)	
PER AZIONI,)	
)	
Applicant.)	

**OPPOSER'S RESPONSES TO APPLICANT'S THIRD SET OF
REQUESTS FOR ADMISSIONS NOS. 15-20**

American Italian Pasta Company ("AIPC"), by and through its counsel, hereby responses to Applicant's Third Set of Requests for Admissions as follows:

GENERAL OBJECTIONS

Opposer hereby incorporates by reference its General Objections to Applicant's First Set of Interrogatories.

RESPONSES

Subject to, and without waiving the foregoing general objections, AIPC provides the following responses to Applicant's Third Set of Requests for Admissions:

Request No. 15:

Admit that the documents Bates Numbered A05000 - A05074 contained on the CD-ROM attached hereto as Exhibit A are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A3 Page 1 of 7

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in the regular course of business. Notwithstanding these objections, Opposer ultimately may agree to the authenticity of some or all of the referenced documents during the remaining portion of this Opposition Proceeding.

Request No. 16:

Admit that the documents Bates Numbered A05074 - A10826 contained on the CD-ROM attached hereto as Exhibit B are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in

the regular course of business. Notwithstanding these objections, Opposer ultimately may agree to the authenticity of some or all of the referenced documents during the remaining portion of this Opposition Proceeding.

Request No. 17:

Admit that the documents Bates Numbered A10832 - A10863 contained on the CD-ROM attached hereto as Exhibit C are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in the regular course of business. Notwithstanding these objections, Opposer ultimately may agree to the authenticity of some or all of the referenced documents during the remaining portion of this Opposition Proceeding.

Request No. 18:

Admit that the documents Bates Numbered U00001 - U04570 contained on the CD-ROM

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A3 Page 3 of 7

attached hereto as Exhibit D are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in the regular course of business. Notwithstanding these objections, Opposer ultimately may agree to the authenticity of some or all of the referenced documents during the remaining portion of this Opposition Proceeding.

Request No. 19:

Admit that the documents Bates Numbered A10864 - A10880 contained on the CD-ROM attached hereto as Exhibit E are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to

enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in the regular course of business. Notwithstanding these objections, Opposer ultimately may agree to the authenticity of some or all of the referenced documents during the remaining portion of this Opposition Proceeding.

Request No. 20:

Admit that the documents Bates Numbered A10881 - A11284 contained on the CD-ROM attached hereto as Exhibit F are true and authentic copies of documents produced by Opposer.

Response: Opposer objects to this Request for Admission to the extent that they seek admissions as to the authenticity of the documents because witnesses not yet been interviewed or deposed may provide a basis to challenge the authenticity of one or more documents.

Accordingly, the information presently known or readily obtainable by Opposer is insufficient to enable Opposer to admit or deny the authenticity of the documents and, therefore, Opposer denies same. Opposer, thus, reserves the right to challenge the authenticity of any document referenced in these Requests based on facts learned during the proceeding. Respondents, however, acknowledge that documents produced by them from their own files that are addressed, or are identical to documents addressed, in the Requests are presumptively authentic and kept in the regular course of business. Notwithstanding these objections, Opposer ultimately may agree

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

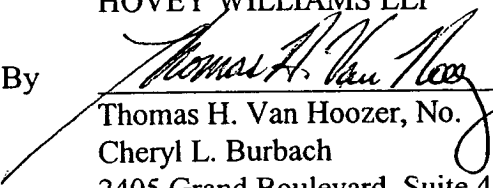
UNDER RULE 2.120(j)(3)(I)

Exhibit A3 Page 5 of 7

to the authenticity of some or all of the referenced documents during the remaining portion of
this Opposition Proceeding.

HOVEY WILLIAMS LLP

By


Thomas H. Van Hoozer, No.
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
Phone: (816) 474-9050
Fax: (816) 474-9057

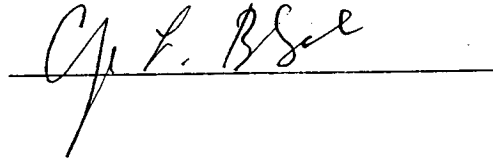
Attorneys for Opposer

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A3 Page 6 of 7

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of July, 2005, I served the foregoing Opposer's Responses to Applicant's Third Set of Requests for Admissions No's 15-20 by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Carla Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005



American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A3 Page 7 of 7

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j) (3) (I)
Exhibit A4 Page 1 of 6

Request No. 23

Admit that Opposer has interviewed no persons who can provide factual testimony that Applicant lacks or at any time lacks a bona fide intention to use the Opposed Mark.

Response: Objection. The request calls for identification of attorney work product and information protected by the attorney-client privilege.

Request No. 24

Admit that during Civil Action No. 02-0594 CV-W-SOW, entitled American Italian Pasta Company v New World Pasta Company, Opposer admitted that the phrase AMERICA'S FAVORITE PASTA is puffery.

Response: Objection. Use of the term "admitted" is argumentative. Denied, in that Opposer contended that, in addition to constituting puffery, AMERICA'S FAVORITE PASTA also serves as Opposer's trademark.

Request No. 25

Admit that during Civil Action No. 02-0594 CV-W-SOW, entitled American Italian Pasta Company v New World Pasta Company, Opposer argued that the phrase AMERICA'S FAVORITE PASTA is puffery.

Response: Denied, in that Opposer argued that, in addition to constituting puffery, AMERICA'S FAVORITE PASTA also serves as Opposer's trademark.

Request No. 26

Admit that during Civil Action No. 02-0594 CV-W-SOW, entitled American Italian Pasta

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A4 Page 2 of 6

Company v New World Pasta Company, Opposer admitted that the phrase AMERICA'S FAVORITE PASTA is laudatory.

Response: Objection. Use of the term "admitted" is argumentative. Denied, in that Opposer contended that, in addition to being laudatory, AMERICA'S FAVORITE PASTA also serves as Opposer's trademark.

Request No. 27

Admit that during Civil Action No. 02-0594 CV-W-SOW, entitled American Italian Pasta Company v New World Pasta Company, Opposer argued that the phrase AMERICA'S FAVORITE PASTA is laudatory.

Response: Denied, in that Opposer argued that, in addition to being laudatory, AMERICA'S FAVORITE PASTA also serves as Opposer's trademark.

Request No. 28

Admit that Opposer through its predecessors in interest have not used the mark or designation AMERICA'S FAVORITE PASTA continuously on its packaging since 1997.

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

Request No. 29

Admit the Opposer through its predecessors in interest have used the mark or designation

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A4 Page 3 of 6

AMERICA'S FAVORITE PASTA continuously on its packaging only since 1997.

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

Request No. 30

Admit that Opposer through it [sic] predecessors in interest have used the mark or designation AMERICA'S FAVORITE PASTA continuously on its packaging since 1997.

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

***THERE IS NO REQUEST NO. 31.**

Request No. 32

Admit that Opposer through its predecessors in interest have not used the mark or designation AMERICA'S FAVORITE PASTA continuously on its promotional materials since May 31, 1989.

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

Request No. 33

Admit that Opposer through it predecessors in interest have used the mark or designation AMERICA'S FAVORITE PASTA continuously on its promotional materials only since May 31, 1989.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A4 Page 4 of 6

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

Request No. 34

Admit that Opposer through its predecessors in interest have used the mark or designation AMERICA'S FAVORITE PASTA continuously on its promotional materials since May 31, 1989.

Response: Objection. The request is confusing and ambiguous, as it would require an admission or denial without reflecting use by Opposer as well as its predecessors in interest.

Request No. 35

Admit that Opposer has produced no documents consisting of marketing studies, surveys or scientific reports directly reflecting U.S. consumer recognition of the phrase "AMERICA'S FAVORITE PASTA" as identifying source in Opposer.

Response: Denied.

Request No. 36

Admit that Opposer has produced no documents directly reflecting the percentage of consumers who recognize the phrase "AMERICA'S FAVORITE PASTA" as identifying source in Opposer (sic)

Response: Denied.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A4 Page 5 of 6

Request No. 37

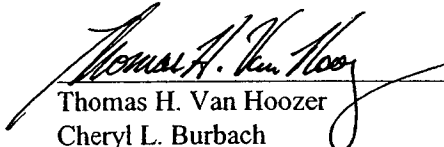
Admit that Oppose (sic) is aware that other companies use or have used the phrase
"AMERICA'S FAVORITE PASTA" followed by a descriptive or generic term in connection
with the sale or offering of food products.

Response: Denied.

Dated: December 6, 2005

Respectfully submitted,

HOVEY WILLIAMS LLP

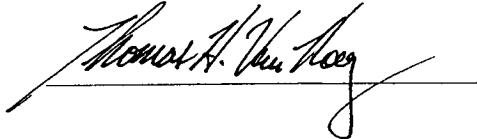

Thomas H. Van Hoozer
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

ATTORNEYS FOR OPPOSER
AMERICAN ITALIAN PASTA COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2005, I served the foregoing OPPOSER'S
ANSWERS TO APPLICANT'S FOURTH SET OF REQUESTS FOR ADMISSION NOS. 21-37
by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005



American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
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Exhibit A4 Page 6 of 6

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Opposer

v.

BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI

Applicant.

Opposition No. 91-161,373

**OPPOSER'S ANSWERS TO APPLICANT'S FIFTH
SET OF REQUESTS FOR ADMISSION NOS. 38-82**

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Opposer, American Italian Pasta Company ("Opposer") makes the following responses and objections to Applicant's Fifth Set of Requests for Admissions.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these requests was conducted with the necessary degree of diligence to locate responsive information and documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its answers to Applicant's requests as may be necessary.

GENERAL OBJECTIONS

Plaintiff incorporates its General Objections as set forth in its Answers to Defendant's First Set of Requests for Admissions.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A5 Page 1 of 27

Request No. 38:

Admit that attached at Exhibit A is a true and accurate copy of the Western District of Missouri's decision denying New World Pasta Company's Motion for Partial Summary Judgement in *American Italian Pasta Company v. New World Pasta Company*, Civil Action No. 02-0594-CV-W-SOW (hereafter referred to as "Court's Order on Summary Judgment").

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests. Opposer further objects to this request on the grounds of completeness, and on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and, therefore, is irrelevant.

Request No. 39

Admit that from 1997 through November of 2000, American Italian Pasta Company manufactured Mueller's dried pasta for Best Foods.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A5 Page 2 of 27

Request No. 40

Admit that in 2000, American Italian Pasta Company purchased the exclusive rights to own all aspects of the Mueller's pasta business.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Request No. 41

Admit that the phrase "America's Favorite Pasta" has appeared continuously on Mueller's pasta packaging since November of 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Request No. 42

Admit that by dollar volume and unit volume, Barilla sold the most dried pasta in the United States in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the request is confusing and ambiguous, and that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 43

Admit that in the Court’s Order on Summary Judgment, the Court stated: “There is a dispute between the parties as to whether or not the phrase “America’s Favorite Pasta” was used on packages of Mueller’s brand pasta between 1997 and 2000 while American Italian Pasta Company was manufacturing the past for Best Foods.”

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is confusing, vague and ambiguous. Applicant has not identified or defined “the Court” and “the Court’s Order on Summary Judgment.” Additionally, the Request seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant, and on the ground of completeness.

Request No. 44

Admit that Mueller's brand pasta is not sold anywhere west of the Mississippi River.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Requests if confusing, vague and ambiguous. Opposer further objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and, therefore, is irrelevant.

Request No. 45

Admit that in the Court's Order on Summary Judgment, the Court stated: "Viewed in context, the phrase "America's Favorite Pasta" is the kind of general claim of superiority that is "so vague, it would be understood as a mere expression of opinion."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is confusing, vague and ambiguous. Applicant has not identified or defined "the Court" and "the Court's Order on Summary Judgment." Additionally, the Request seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant, and on the basis of completeness.

Request No. 46

Admit that Exhibit B is a true and accurate copy of American Italian Pasta Company's Suggestions in Opposition to New World Pasta's Motion for Partial Summary Judgment, which American Italian Pasta Company submitted in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 47

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The following answers from the Wind Survey to Q4 a-c demonstrated that the phrase "America's Favorite Pasta" is an ambiguous, non-specific self laudatory phrase of public acceptance (Volume II - Wind Survey)."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 48

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "AMERICAN ITALIAN PASTA COMPANY seeks to have this Court find as a matter of law, that the slogan "America's Favorite Pasta" is 'puffery.'"

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 49

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "If "America's Favorite Pasta" is a specific factual statement, it is generic.

"A generic word can never function as a trademark to indicate original. The terms 'generic' and 'trademark' are mutually exclusive, since the function of a mark is to identify and distinguish the goods or services of one seller from those of all others."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 50

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The Slogan is Puffery."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes "The Slogan", where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 51

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The self-laudatory phrase is in widespread use in many fields by both merchants and consumers..." [sic]

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what is the meaning of "self-laudatory phrase," where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 52

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: “ ‘America’s Favorite’ is a self-laudation or mere puffery used by many third parties to claim general superiority for their products, and is not actionable.”

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it “argued” a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 53

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: “the advertising slogan at issue is self-laudatory or ‘puffery.’”

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes "the advertising slogan at issue," where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 54

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "the answers to the Wind Survey demonstrate the ambiguously laudatory or boastful character of the phrase."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes "the Wind Survey" or "the phrase," where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 55

Admit that attached as Exhibit C is a true and accurate copy of the Affidavit of William M. Weilbacher and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 56

Admit that attached as Exhibit D is a true and accurate copy of the Affidavit of Darren M. Geliebter and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 57

Admit that attached as Exhibit E is a true and accurate copy of the Affidavit of Timothy S. Webster in Opposition to New World Pasta's Motion for Partial Summary Judgment, and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 58

Admit that attached as Exhibit F is a true and accurate copy of New World Pasta's Suggestions in Opposition to American Italian Pasta Company's Motion to Dismiss and Suggestions in Support of New World Pasta's Motion for Partial Summary Judgment in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding,

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A5 Page 13 of 27

discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 59

Admit that attached as Exhibit G is a true and accurate copy of Consumer Perceptions of the Phrase "America's Favorite Pasta": Reply Declaration of Yoram (Jerry) Wind in Support of New World Pasta's Reply Suggestions in Support of Its Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 60

Admit that attached as Exhibit H is a true and accurate copy of the Declaration of Forrest A. Hainline III and exhibits Supporting New World Pasta's Suggestions in Opposition to American Italian Pasta Company's Motion to Dismiss and Suggestions in support of New World

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A5 Page 14 of 27

Pasta's Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 61

Admit that the "Volume Sales" and "Dollar Sales" listed in the document attached hereto as Exhibit I for Mueller's Pasta are accurate.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. It is unclear what is meant by "Exhibit I for Mueller's Pasta."

Request No. 62

Admit that "Share of Dollar Sales" listed in the document attached hereto as Exhibit

J for Mueller's Pasta are accurate.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. It is unclear what is meant by "Exhibit J for Mueller's Pasta." Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 63

Admit that attached hereto as Exhibit K is a true and accurate copy of the Declaration of Lloyd E. Oliver and supporting exhibits submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 64

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 65

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 2001.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A5 Page 17 of 27

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 66

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 67

Admit that AMERICAN ITALIAN PASTA COMPANY [sic] has used the phrase AMERICA'S FAVORITE PASTA on packages of Mueller's brand pasta continuously only since November of 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding,

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A5 Page 18 of 27

discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Request No. 68

Admit that American Italian Pasta Company claims the exclusive right to use the phrase AMERICA'S FAVORITE PASTA as a trademark in connection with pasta products.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant. This includes any claim by Opposer not material to the present opposition.

Request No. 69

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 1997.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3,

2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 70

Admit that American Italian Pasta Company's unit volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 1997.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 71

Admit that, by dollar volume, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA in 2004, than in 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or

before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 72

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA than in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 73

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA than in 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding,

discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 74

Admit that by unit volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the phrase AMERICA'S FAVORITE PASTA than in 2001.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 75

Admit that by unit volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the phrase AMERICA'S FAVORITE PASTA than in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A5 Page 22 of 27

before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 76

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA’S FAVORITE PASTA than in 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 77

Admit that the document marked Bates No. U 02311 and attached hereto as Exhibit L shows marketing expenses directed to the Mueller’s Brand.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories,

requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 78

Admit that the marketing expenses listed in the document marked Bates No. U 02311 and attached hereto as Exhibit L, shows marketing expenses directed solely to the promotion of the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 79

Admit that Opposer has not yet produced any documents listing the monies Opposer spent to promote the phrase AMERICA'S FAVORITE PASTA only.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Request No. 80

Admit that between 2000 and the filing of this Opposition, neither Opposer nor another acting on Opposer’s behalf has promoted or advertised the phrase AMERICA’S FAVORITE PASTA in any nationally distributed [sic] newspaper or magazine.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 81

Admit that between 2000 and the filing of this Opposition, neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. The phrase "west of the Mississippi River" is confusing and ambiguous. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Request No. 82

Admit that neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

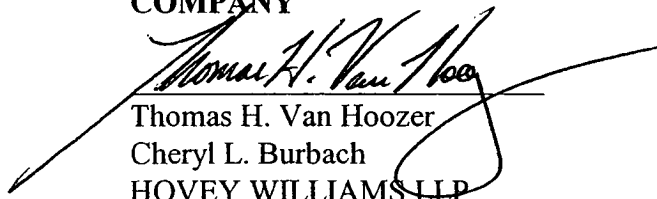
Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. The phrase "west of the Mississippi River" is confusing and ambiguous. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Dated: December 8, 2005

**AMERICAN ITALIAN PASTA
COMPANY**

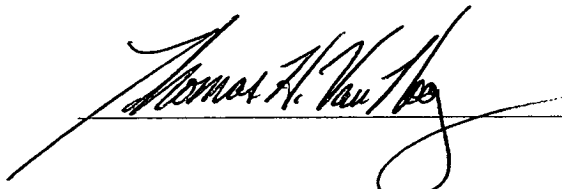


Thomas H. Van Hoozer
Cheryl L. Burbach
HOVEY WILLIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
Phone: (816) 474-9050
Fax: (816) 474-9057
Attorneys for the Opposer

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2005, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S FIFTH SET OF REQUESTS FOR ADMISSION NOS. 38-82 by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005



American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A5 Page 27 of 27

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA
COMPANY,

Opposer

v.

BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI

Applicant.

Opposition No. 91-161,373

**OPPOSER'S SUPPLEMENTAL ANSWERS TO APPLICANT'S FIFTH
SET OF REQUESTS FOR ADMISSION NOS. 38-82**

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Opposer, American Italian Pasta Company ("Opposer") makes the following responses and objections to Applicant's Fifth Set of Requests for Admissions.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these requests was conducted with the necessary degree of diligence to locate responsive information and documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its answers to Applicant's requests as may be necessary.

GENERAL OBJECTIONS

Plaintiff incorporates its General Objections as set forth in its Answers to Defendant's First Set of Requests for Admissions. Additionally, Opposer's initial objections to the specific Requests (that do not pertain to the timeliness of the Requests) remain unchallenged. Thus, all Answers herein are made subject to the specific objections set forth in the Responses to the Requests.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A6 Page 1 of 34

Request No. 38:

Admit that attached at Exhibit A is a true and accurate copy of the Western District of Missouri's decision denying New World Pasta Company's Motion for Partial Summary Judgement in *American Italian Pasta Company v. New World Pasta Company*, Civil Action No. 02-0594-CV-W-SOW (hereafter referred to as "Court's Order on Summary Judgment").

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests. Opposer further objects to this request on the grounds of completeness, and on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and, therefore, is irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit A is a true and accurate copy of the Western District of Missouri's decision denying New World Pasta Company's Motion for Partial Summary Judgement in *American Italian Pasta Company v. New World Pasta Company*, Civil Action No. 02-0594-CV-W-SOW .

Request No. 39

Admit that from 1997 through November of 2000, American Italian Pasta Company manufactured Mueller's dried pasta for Best Foods.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 2 of 34

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Supplemental Response: Subject to the General Objections and the foregoing Response, Opposer admits that from 1997 through November of 2000, American Italian Pasta Company manufactured Mueller's dried pasta for Best Foods.

Request No. 40

Admit that in 2000, American Italian Pasta Company purchased the exclusive rights to own all aspects of the Mueller's pasta business.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Supplemental Response: Subject to the General Objections and the foregoing Response, Opposer admits that in 2000, American Italian Pasta Company purchased the exclusive rights to own all aspects of the Mueller's pasta business.

Request No. 41

Admit that the phrase "America's Favorite Pasta" has appeared continuously on Mueller's pasta packaging since November of 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 3 of 34

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Supplemental Response: Subject to the General Objections and the foregoing Response, Opposer admits that the phrase "America's Favorite Pasta" has appeared continuously on Mueller's pasta packaging since November of 2000.

Request No. 42

Admit that by dollar volume and unit volume, Barilla sold the most dried pasta in the United States in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the request is confusing and ambiguous, and that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies the allegations in Request No. 42.

Request No. 43

Admit that in the Court's Order on Summary Judgment, the Court stated: "There is a dispute between the parties as to whether or not the phrase "America's Favorite Pasta" was used on packages of Mueller's brand pasta between 1997 and 2000 while American Italian Pasta Company was manufacturing the past for Best Foods."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is confusing, vague and ambiguous. Applicant has not identified or defined “the Court” and “the Court’s Order on Summary Judgment.” Additionally, the Request seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant, and on the ground of completeness.

Supplemental Response: Opposer further objects to this Request as the Court’s Order on Summary Judgment speaks for itself. Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that the quoted text in Request No. 43 is an accurate quote from the Court’s Order on Summary Judgment.

Request No. 44

Admit that Mueller’s brand pasta is not sold anywhere west of the Mississippi River.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Requests if confusing, vague and ambiguous. Opposer further objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and, therefore, is irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies the allegations in Request No. 44.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT’S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A6 Page 5 of 34

Request No. 45

Admit that in the Court's Order on Summary Judgment, the Court stated: "Viewed in context, the phrase "America's Favorite Pasta" is the kind of general claim of superiority that is "so vague, it would be understood as a mere expression of opinion."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is confusing, vague and ambiguous. Applicant has not identified or defined "the Court" and "the Court's Order on Summary Judgment." Additionally, the Request seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant, and on the basis of completeness.

Supplemental Response: Opposer further objects to this Request as the Court's Order on Summary Judgment speaks for itself. Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that the quoted text in Request No. 45 is an accurate quote from the Court's Order on Summary Judgment.

Request No. 46

Admit that Exhibit B is a true and accurate copy of American Italian Pasta Company's Suggestions in Opposition to New World Pasta's Motion for Partial Summary Judgment, which American Italian Pasta Company submitted in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3,

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 6 of 34

2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit B is a true and accurate copy of the American Italian Pasta Company's Suggestions in Opposition to New World Pasta's Motion for Partial Summary Judgment, which American Italian Pasta Company submitted in Civil Action No. 02 0594 CV-W-SOW.

Request No. 47

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The following answers from the Wind Survey to Q4 a-c demonstrated that the phrase "America's Favorite Pasta" is an ambiguous, non-specific self laudatory phrase of public acceptance (Volume II - Wind Survey)."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 7 of 34

on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Applicant does not provide the source of the quote above and due to the over 11,000 pages of documents produced by Opposer. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. Subject to the foregoing objections, Opposer admits that the quoted argument was made by Opposer in Civil Action No. 02 0594 CV-W-SOW, but further argued that the phrase was a trademark.

Request No. 48

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "AMERICAN ITALIAN PASTA COMPANY seeks to have this Court find as a matter of law, that the slogan "America's Favorite Pasta" is 'puffery.'"

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A6 Page 8 of 34

documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. Subject to the foregoing objections, Opposer admits that it argued that the slogan "AMERICA'S FAVORITE PASTA" is "puffery" in Civil Action No. 02-0594 CV-W-SOW, but that it served as a trademark.

Request No. 49

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "If "America's Favorite Pasta" is a specific factual statement, it is generic. "A generic word can never function as a trademark to indicate original. The terms 'generic' and 'trademark' are mutually exclusive, since the function of a mark is to identify and distinguish the goods or services of one seller from those of all others."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. In this regard, the preceding sentences of the argument clearly indicate that Opposer argued that AMERICA'S FAVORITE PASTA is a trademark, citing numerous appended registrations issued by the United States Patent

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 9 of 34

and Trademark Office and referenced in the argument. As such, Opposer objects to this Request as incomplete and misleading, and, therefore, denies this Request.

Request No. 50

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The Slogan is Puffery."

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes "The Slogan", where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. Subject to the foregoing objections, Opposer argued that the slogan "AMERICA'S FAVORITE PASTA" is puffery in Civil Action No. 02 0594 CV-W-SOW, but served as a trademark.

Request No. 51

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: "The self-laudatory phrase is in widespread use in many fields by both merchants and consumers...". [sic]

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what is the meaning of "self-laudatory phrase," where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. In this regard, the remainder of the sentence has been excised, which states "and has been registered as part of trademarks." As such, in view of the misleading statement made by such overzealous editing, Opposer denies this request.

Request No. 52

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: “ ‘America’s Favorite’ is a self-laudation or mere puffery used by many third parties to claim general superiority for their products, and is not actionable.”

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it “argued” a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer’s successful assertion that its use of AMERICA’S FAVORITE PASTA did not constitute false advertising. In this regard, the preceding sentences of the paragraph asserting that AMERICA’S FAVORITE PASTA has been registered as part of trademarks, has been edited and the quote is incomplete and misleading. Subject to the foregoing objections, Opposer admits that it argued in Civil Action No. 02 0594 CV-W-SOW that use of AMERICA’S FAVORITE PASTA is puffery and not actionable in the context of false advertising.

Request No. 53

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: “the advertising slogan at issue is self-laudatory or “puffery.””

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes “the advertising slogan at issue,” where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it “argued” a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer’s successful assertion that its use of AMERICA’S FAVORITE PASTA did not constitute false advertising. Subject to the foregoing objections, Opposer admits that it argued that AMERICA’S FAVORITE PASTA was self-laudatory or puffery, but served as a trademark.

Request No. 54

Admit that in Civil Action No. 02 0594 CV-W-SOW, American Italian Pasta Company argued that: “the answers to the Wind Survey demonstrate the ambiguously laudatory or boastful character of the phrase.”

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects on the basis that the Request is vague, confusing and ambiguous. No information is provided as to what constitutes "the Wind Survey" or "the phrase," where the alleged argument was made and in what context. Rather, Applicant appears to have hand-picked certain statements from unidentified documents and without context in order to use them in a self-serving manner. Thus, to request that Opposer admit that it "argued" a particular sentence is an improper oversimplification and lacks a complete foundation. Opposer further objects on the basis of completeness. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Opposer maintains its objections recited above (except for those pertaining to the timeliness of this Request) and further objects to this Request as unduly burdensome. Opposer further objects on the grounds of completeness, in that the quote taken from documents making numerous arguments in support of Opposer's successful assertion that its use of AMERICA'S FAVORITE PASTA did not constitute false advertising. In this regard, the initial part of the quotation has been edited, and, thus, the statement of the argument is misleading and incomplete. Opposer, thus, denies this Request.

Request No. 55

Admit that attached as Exhibit C is a true and accurate copy of the Affidavit of William M. Weilbacher and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A6 Page 14 of 34

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit C is a true and accurate copy of the Affidavit of William M. Weilbacher and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 56

Admit that attached as Exhibit D is a true and accurate copy of the Affidavit of Darren M. Geliebter and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit D is a true and accurate copy of the Affidavit of Darren M. Geliebter and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 57

Admit that attached as Exhibit E is a true and accurate copy of the Affidavit of Timothy S. Webster in Opposition to New World Pasta’s Motion for Partial Summary Judgment, and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit E is a true and accurate copy of the Affidavit of Timothy S. Webster in Opposition to New World Pasta’s Motion for Partial Summary Judgment, and supporting exhibits, submitted by American Italian Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 58

Admit that attached as Exhibit F is a true and accurate copy of New World Pasta’s Suggestions in Opposition to American Italian Pasta Company’s Motion to Dismiss and Suggestions in Support of New World Pasta’s Motion for Partial Summary Judgment in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit F is a true and accurate copy of the New World Pasta's Suggestions in Opposition to American Italian Pasta Company's Motion to Dismiss and Suggestions in Support of New World Pasta's Motion for Partial Summary Judgment in Civil Action No. 02 0594 CV-W-SOW.

Request No. 59

Admit that attached as Exhibit G is a true and accurate copy of Consumer Perceptions of the Phrase "America's Favorite Pasta": Reply Declaration of Yoram (Jerry) Wind in Support of New World Pasta's Reply Suggestions in Support of Its Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit G is a true and accurate copy of the Consumer Perceptions of the Phrase "America's Favorite Pasta": Reply Declaration of Yoram (Jerry) Wind in Support of New World Pasta's Reply Suggestions in Support of Its Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 60

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,343
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A6 Page 17 of 34

Admit that attached as Exhibit H is a true and accurate copy of the Declaration of Forrest A. Hainline III and exhibits Supporting New World Pasta's Suggestions in Opposition to American Italian Pasta Company's Motion to Dismiss and Suggestions in support of New World Pasta's Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects on the basis that it lacks foundation. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit H is a true and accurate copy of the Declaration of Forrest A. Hainline III and exhibits Supporting New World Pasta's Suggestions in Opposition to American Italian Pasta Company's Motion to Dismiss and Suggestions in support of New World Pasta's Motion for Partial Summary Judgment, submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 61

Admit that the "Volume Sales" and "Dollar Sales" listed in the document attached hereto as Exhibit I for Mueller's Pasta are accurate.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3,

2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. It is unclear what is meant by "Exhibit I for Mueller's Pasta."

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that the "Volume Sales" and "Dollar Sales" listed in the document attached hereto as Exhibit I for Mueller's Pasta are accurate for the time periods stated therein.

Request No. 62

Admit that "Share of Dollar Sales" listed in the document attached hereto as Exhibit J for Mueller's Pasta are accurate.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. It is unclear what is meant by "Exhibit J for Mueller's Pasta." Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that the "Share of Dollar Sales" listed in the document attached hereto as Exhibit J for Mueller's Pasta are accurate for the time periods stated therein.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 19 of 34

Request No. 63

Admit that attached hereto as Exhibit K is a true and accurate copy of the Declaration of Lloyd E. Oliver and supporting exhibits submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Exhibit K is a true and accurate copy of the Declaration of Lloyd E. Oliver and supporting exhibits submitted by New World Pasta Company in Civil Action No. 02 0594 CV-W-SOW.

Request No. 64

Admit that American Italian Pasta Company’s dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA’S FAVORITE PASTA have declined each year since 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT’S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 20 of 34

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer further objects to this Request as vague and ambiguous; as reflected by the Answer to Request Nos. 39 and 40, sales of Mueller's pasta with the mark AMERICA'S FAVORITE PASTA prior to October 2000 were by Opposer's predecessor-in-interest and, as such, the request is ambiguous as to sales occurring prior to October of 2000, and is, therefore, denied.

Request No. 65

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 2001.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies this Request.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j) (3) (I)

Exhibit A6 Page 21 of 34

Request No. 66

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies this Request.

Request No. 67

Admit that AMERICAN ITALIAN PASTA COMPANY [sic] has used the phrase AMERICA'S FAVORITE PASTA on packages of Mueller's brand pasta continuously only since November of 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 22 of 34

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies this Request.

Request No. 68

Admit that American Italian Pasta Company claims the exclusive right to use the phrase AMERICA'S FAVORITE PASTA as a trademark in connection with pasta products.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant. This includes any claim by Opposer not material to the present opposition.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that American Italian Pasta Company claims the exclusive right to use the phrase AMERICA'S FAVORITE PASTA as a trademark in connection with pasta products.

Request No. 69

Admit that American Italian Pasta Company's dollar volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 1997.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding,

discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer further objects to this Request as vague and ambiguous; as reflected by the Answer to Request Nos. 39 and 40, sales of Mueller's pasta with the mark AMERICA'S FAVORITE PASTA prior to October 2000 were by Opposer's predecessor-in-interest and, as such, the request is ambiguous as to sales occurring prior to October of 2000, and is, therefore, denied.

Request No. 70

Admit that American Italian Pasta Company's unit volume of sales of Mueller brand pasta products sold in connection with the mark AMERICA'S FAVORITE PASTA have declined each year since 1997.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer further objects to this Request as vague and ambiguous; as reflected by the Answer to Request Nos. 39 and 40, sales of Mueller's pasta with the mark AMERICA'S FAVORITE PASTA prior to October 2000 were by Opposer's predecessor-in-

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 24 of 34

interest and, as such, the request is ambiguous as to sales occurring prior to October of 2000, and is, therefore, denied.

Request No. 71

Admit that, by dollar volume, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA in 2004, than in 2000.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer further objects to this Request as vague and ambiguous; as reflected by the Answer to Request Nos. 39 and 40, sales of Mueller's pasta with the mark AMERICA'S FAVORITE PASTA prior to October 2000 were by Opposer's predecessor-in-interest and, as such, the request is ambiguous as to sales occurring prior to October of 2000, and is, therefore, denied.

Request No. 72

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA than in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3,

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 25 of 34

2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer maintains its foregoing Objections (not pertaining to the timeliness of the Request). The Request is vague, ambiguous and confusing because units (which refer to weight) and packaging are two different measurements. Therefore, the Request is incomprehensible. Further, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer states that its business records show that for the fiscal year October 2003 through September 2004, Opposer sold fewer pasta products, measured in weight and dollars, bearing the mark AMERICA'S FAVORITE PASTA than for the fiscal year October 2002 through September 2003. Opposer also directs Applicant to Opposer's Response to Interrogatory No. 35.

Request No. 73

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA than in 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer maintains its foregoing Objections (not pertaining to the timeliness of the Request). The Request is vague, ambiguous and confusing because units (which refer to weight) and packaging are two different measurements. Therefore, the Request is incomprehensible. Further, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer's business records do not keep track of such information by packages. Rather, in terms of weight and dollars, Opposer states that for the fiscal year October 2004 through September 2005, American Italian Pasta Company sold fewer pasta products, measured in weight and dollars, bearing the mark AMERICA'S FAVORITE PASTA than for the fiscal year October 2003 - September 2004. Opposer also directs Applicant to Opposer's Response to Interrogatory No. 35.

Request No. 74

Admit that by unit volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the phrase AMERICA'S FAVORITE PASTA than in 2001.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer maintains its foregoing Objections (not pertaining to the timeliness of the Request). The Request is vague, ambiguous and confusing because units (which refer to weight) and packaging are two different measurements. Therefore, the Request is incomprehensible. Further, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer directs Applicant to Opposer's Supplemental Response to Request No. 73 and Interrogatory No. 35..

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 27 of 34

Request No. 75

Admit that by unit volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the phrase AMERICA'S FAVORITE PASTA than in 2002.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer maintains its foregoing Objections (not pertaining to the timeliness of the Request). The Request is vague, ambiguous and confusing because units (which refer to weight) and packaging are two different measurements. Therefore, the Request is incomprehensible. Further, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Subject to the General Objections, the Response and foregoing objections, Opposer directs Applicant to its Response to Interrogatory No. 35.

Request No. 76

Admit that by dollar volume, in 2004, American Italian Pasta Company sold fewer pasta packages bearing the mark AMERICA'S FAVORITE PASTA than in 2003.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Opposer maintains its foregoing Objections (not pertaining to the timeliness of the Request). The Request is vague, ambiguous and confusing because units (which refer to weight) and packaging are two different measurements. Therefore, the Request is incomprehensible. Further, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Subject to the General Objections, the Response and foregoing objections, Opposer directs Applicant to its Response to Interrogatory No. 35.

Request No. 77

Admit that the document marked Bates No. U 02311 and attached hereto as Exhibit

L shows marketing expenses directed to the Mueller's Brand.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that the document marked Bates No. U 02311 and attached as Exhibit L to Applicant's Fifth Request for Admissions shows marketing expenses directed to the Mueller's Brand including the trademark AMERICA'S FAVORITE PASTA.

Request No. 78

Admit that the marketing expenses listed in the document marked Bates No. U 02311 and attached hereto as Exhibit L, shows marketing expenses directed solely to the promotion of the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies that the document marked Bates No. U 02311 and attached as Exhibit L to Applicant's Fifth Request for Admissions shows marketing expenses directed solely to the promotion of the phrase AMERICA'S FAVORITE PASTA.

Request No. 79

Admit that Opposer has not yet produced any documents listing the monies Opposer spent to promote the phrase AMERICA'S FAVORITE PASTA only.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, Opposer objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, irrelevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer admits that Opposer has not yet produced any documents listing the monies Opposer spent to promote the phrase AMERICA'S FAVORITE PASTA only.

Request No. 80

Admit that between 2000 and the filing of this Opposition, neither Opposer nor another acting on Opposer's behalf has promoted or advertised the phrase AMERICA'S FAVORITE PASTA in any nationally distributed [sic] newspaper or magazine.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies this Request.

Request No. 81

Admit that between 2000 and the filing of this Opposition, neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. The phrase "west of the Mississippi River" is confusing and ambiguous. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies that between 2000 and the filing of this Opposition, neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

Request No. 82

Admit that neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding,

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,343

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A6 Page 32 of 34

discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

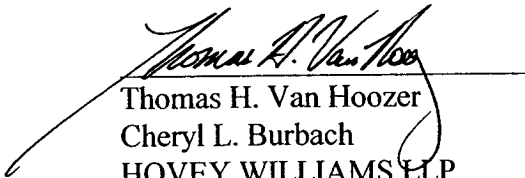
Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer also objects to this Request as vague, ambiguous and confusing. The phrase "west of the Mississippi River" is confusing and ambiguous. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Therefore, the Request is not relevant.

Supplemental Response: Subject to the General Objections, the Response and foregoing Objections (not pertaining to the timeliness of the Request), Opposer denies that neither Opposer nor another acting on Opposer's behalf has distributed any advertising or promotional material bearing the phrase AMERICA'S FAVORITE PASTA to areas of the United States west of the Mississippi River.

Dated: August 10, 2006

**AMERICAN ITALIAN PASTA
COMPANY**

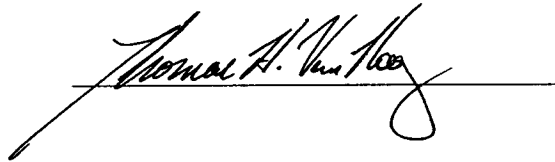


Thomas H. Van Hoozer
Cheryl L. Burbach
HOVEY WILLIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
Phone: (816) 474-9050
Fax: (816) 474-9057
Attorneys for the Opposer

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2006, I served the foregoing OPPOSER'S SUPPLEMENTAL ANSWERS TO APPLICANT'S FIFTH SET OF REQUESTS FOR ADMISSION NOS. 38-82 by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

A handwritten signature in black ink, appearing to read "Thomas A. Van Hise", is written over a horizontal line.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA COMPANY)	
)	
Opposer,)	OPPOSITION NO.: 91-161,373
)	SERIAL NO.:
v.)	MARK:
)	
BARILLA G. E R. FRATELLI-SOCIETA PER AZIONI,)	
)	
Applicant.)	

OPPOSER'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Opposer American Italian Pasta Company ("Opposer") makes the following responses and objections to Applicant's First Set of Interrogatories.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these interrogatories was conducted with the necessary degree of diligence to locate responsive information and documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its answers to Applicant's interrogatories as may be necessary.

GENERAL OBJECTIONS

1. Opposer objects to Applicant's interrogatories to the extent that they seek information subject to the attorney-client privilege or other privilege.
2. Opposer objects to each interrogatory to the extent it seeks information which have been prepared in anticipation of litigation or for trial, or otherwise subject to protection under the work product doctrine or Rule 26(b)(3) of the Federal Rules of Civil Procedure.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 1 of 15

3. Opposer's answers to these interrogatories are subject to the General Objections as well as the objections made to each specific interrogatory. To extent these General Objections are applicable, they are incorporated by reference into each of Opposer's answers and by responding to certain of Applicant's interrogatories, Opposer does not waive these General Objections or any specific objections to particular requests. Opposer will produce requested information where otherwise appropriate. However, Opposer reserves its right to object to the admission of such information or documents at trial.

4. Opposer objects to each interrogatory to the extent that it calls for a legal conclusion.

5. Opposer objects to the production of information equally available to Applicant from third-party sources.

6. Opposer objects to the Applicant's interrogatories on the grounds that they are overly broad and unduly burdensome, seek information and documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent they seek to impose obligations on Opposer beyond those required by the Trademark Trial and Appeal Board Rules and Federal Rules of Civil Procedure.

7. Opposer objects to Applicant's interrogatories on the grounds that they are overly broad in time and scope.

8. Opposer's responses to these interrogatories do not waive any attorney-client privilege or work product protection, nor does it waive any right to challenge the use of any such information at trial or other proceeding in this action.

9. Opposer objects to these interrogatories to the extent that they seek confidential commercial information and trade secrets of Opposer or its predecessors in interest. Upon entry of a suitable protective order, Opposer will supplement its answers as appropriate.

RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1

Identify the officer(s) or employee(s) of AIPC primarily responsible for the sales and marketing of goods under Opposer's Mark.

ANSWER

Opposer objects to this interrogatory as being overly broad, unduly burdensome, and vague and ambiguous as requiring identification of officers and employees primarily responsible for sales and marketing. Notwithstanding the foregoing objection, Opposer identifies the following officers and employees of Opposer which have principal responsibilities in connection with sales and marketing of its pasta items bearing Opposer's Mark: Tim Webster, President & CEO; Dan Trott, Executive Vice President Sales & Marketing; Walt George, Executive Vice President Operations & Supply Chain; Neal Clute, Director of Purchasing & Packaging Development; Celeste Wegner, Director, Packaging Services; Drew Lericos, Director of Marketing, all located at American Italian Pasta Company, 4100 North Mulberry Drive, Kansas City, MO 64116, but may be reached through Opposer's counsel.

INTERROGATORY NO. 2

Identify and describe each pasta item ever sold by AIPC or on its behalf under Opposer's Mark.

ANSWER

Opposer objects to this interrogatory as vague, overly broad in time and scope and unduly burdensome, and not relevant to the present dispute. Notwithstanding the foregoing objection, and subject to supplementation as additional information is discovered, Opposer identifies the following

styles and packaging sizes currently known to Opposer where the mark AMERICA'S FAVORITE

PASTA is or has been used on the packaging for the goods:

Bowties	12oz, 96 oz
Elbows	64 oz, 48oz, 32oz, 16oz, 8oz
Ridged Elbows	16oz
Mostaccioli	16oz
Tri Color Bowties	12oz
Tri Color Ruffles	12oz
Tri Color Shells	16oz
Tri Color Twists	12oz
Tri Color Rotini	12 oz.
Spaghetti	16oz, 8oz, 32oz, 48 oz.
Fine Linguine	16oz
Rotini	16oz
Gemelli	16oz
Jumbo Shells	12oz
Thin Spaghetti	16oz, 8oz, 32oz, 48oz
Angel Hair	16oz
Vermicelli	8oz, 16oz
Mini Penne	16oz, 500g
Ruffles	16oz, 96 oz.
Small Sea Shells	16oz, 96 oz.
Ziti	16oz

Lasagna	8oz
Linguine	16oz
Corkscrews	16oz
Rigatoni	16oz, 96 oz
Sea Shells	16oz
Ready Cut	16oz
Rotini Twists	16oz
Fettuccine	16oz
Ridge Mostaccioli	16oz, 96 oz.
Penne Rigate	16oz
Rotelle	16 oz.
Lasagne (smooth)	16 oz.

Reduced Carb Spaghetti/Penne

Reduced Carb Spaghetti	12 oz.
Reduced Carb Elbows	12 oz.
Reduced Carb Penne	12 oz.
Reduced Carb Rotini	12 oz.
Reduced Carb Lasagne	16 oz.

Reduced Carb Variety Pack

Reduced Carb Mixed Case

Radiatore	500g
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Back to Basics

INTERROGATORY NO. 3

State the exact date on which Opposer will rely as the first date of use of Opposer's Mark in connection with the sale of each pasta item specified in Response to Interrogatory No. 2.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and requiring the provision of information protected from disclosure as attorney work product. Notwithstanding the foregoing, and subject to supplementation as additional information is discovered, Opposer identifies the following information concerning the first known usages:

May 31, 1989 on promotional materials,

September, 1997 - on packaging for the goods.

INTERROGATORY NO. 4

Identify all documents, purchase orders, invoices, labels or any writing whatsoever which Opposer will rely upon to establish the date specified in response to Interrogatory No. 3.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and requiring the provision of information protected from disclosure as attorney work product. Notwithstanding the foregoing, and subject to supplementation as additional information is discovered, Opposer identifies the following information concerning the first known usages:

Opposer's coupon with a May 31, 1989 expiration date; and

Mueller's Elbows package date stamped 1997.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 6 of 15

INTERROGATORY NO. 5

State the exact date on which Opposer will rely as the first date of use of the term AMERICA'S FAVORITE in connection with the sale of each pasta item specified in Response to Interrogatory No. 2.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and requiring the provision of information protected from disclosure as attorney work product. Notwithstanding the foregoing, Opposer identifies the following information concerning the first known usages of AMERICA'S FAVORITE by Opposer or its predecessors in interest. 1950's, use of AMERICA'S FAVORITE on Mueller's Elbows packaging, May 31, 1989, Coupon for Mueller's pasta using AMERICA'S FAVORITE PASTA; September 1997, Mueller's Elbows package using AMERICA'S FAVORITE PASTA.

INTERROGATORY NO. 6

Identify all documents, purchase orders, invoices, labels or any writing whatsoever which Opposer will rely upon to establish the date specified in response to Interrogatory No. 5.

ANSWER

Opposer objects to this Interrogatory as being overly broad and unduly burdensome, and requiring the provision of information protected from disclosure as attorney work product. Notwithstanding the foregoing, Opposer answers as follows: Recipe book from 1950's showing use of AMERICA'S FAVORITE on Mueller's Elbows packaging, coupon with expiration date of May 31, 1989 using AMERICA'S FAVORITE PASTA, MUELLER'S Elbows box date coded 1997 showing use of AMERICA'S FAVORITE PASTA on packaging.

INTERROGATORY NO. 7

With respect to each pasta item identified in response to Interrogatory No. 2, state:

- (a) The manner in which Opposer's Mark is used, *e.g.*, by affixation to packaging, on labels, etc.;
- (b) Whether AIPC itself ever manufactured the pasta item and, if not, the identity of the manufacturer;
- (c) Whether the sale of the pasta item has been continuous from January 1, 1997 through the present;
- (d) If the answer to subparagraph (c) is in the negative, state the periods of time for which the Opposer's Mark was not used.

ANSWER

Opposer objects to this interrogatory as overly broad and unduly burdensome, and not relevant to the present opposition proceeding. Notwithstanding the foregoing, Opposer answers as follows:

- (a) On packaging and in advertising and promotional materials in connection with the goods;
- (b) Yes;
- (c) Yes;
- (d) Irrelevant to the proceedings herein.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 8 of 15

INTERROGATORY NO. 8

List all geographical areas (by city and/or state) in which each pasta item specified in response to Interrogatory No. 2 is distributed and/or sold under Opposer's Mark.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and not relevant to this opposition proceeding. Notwithstanding the foregoing, Opposer advises that its pasta items sold under Opposer's Mark are sold throughout the United States, although distribution of its products under Opposer's Mark are primarily limited to military commissaries and mass merchandise stores in areas west of the Mississippi River.

INTERROGATORY NO. 9

Identify all media which AIPC or its license has utilized to advertise or promote each pasta item specified in response to Interrogatory No. 2.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and not relevant to the present opposition proceedings. Notwithstanding the foregoing, and subject to supplementation, promotional use by Opposer and its predecessors in interest includes presentation on packaging, on coupons, television and radio advertising, and website advertising.

INTERROGATORY NO. 10

For each calendar year since 1997, state the amount expended by Opposer in connection with the advertising or promotion in the U.S. of each pasta item specified in response to Interrogatory No. 2 and sold under Opposer's Mark.

ANSWER

AIPC incorporates by references is General Objections. AIPC further objects to the extent that the interrogatory is irrelevant to the claims and defenses of the parties. AIPC objects that the

interrogatory seeks highly confidential business and commercial information. Subject to these and the general objections, and to the extent such information is available, AIPC will provide responsive and relevant information after entry of a suitable protective order.

INTERROGATORY NO. 11

For each calendar year since 1997, state the amount of sales (by dollar or volume), by Opposer or its licensee, of each item of pasta specified in response to Interrogatory No. 2, or item bearing Opposer's Mark.

ANSWER

AIPC incorporates by references is General Objections. AIPC further objects to the extent that the interrogatory is irrelevant to the claims and defenses of the parties. AIPC objects that the request seeks highly confidential business and commercial information. Subject to these and the general objections, AIPC will provide responsive and relevant information, to the extent available, after entry of a suitable protective order.

INTERROGATORY NO. 12

Identify by name and address all persons, organizations or agencies responsible for advertising each pasta item specified in response to Interrogatory No. 2 bearing Opposer's Mark.

ANSWER

Opposer objects to this interrogatory as overly broad, unduly burdensome, and not relevant to the present opposition proceedings, and requesting confidential commercial information. Notwithstanding the foregoing, Opposer identifies the advertising agencies of Barkley & Evergreen,

432 W. 8th Street, Kansas City, Missouri 64105, and PowerPact LLC, 2902 Polo Parkway, Midlothian, VA 23113, who have assisted Opposer in developing advertising for the pasta products sold under Opposer's mark.

INTERROGATORY NO. 13

State all facts that support the claim that the Mueller's Brand is "AMERICA'S FAVORITE PASTA" and identify any documents sufficient to support such facts.

ANSWER

Opposer objects to this interrogatory as incorrectly assuming that Opposer is making a factual claim. Opposer is not making a factual claim regarding its trademark AMERICA'S FAVORITE PASTA. Opposer's use of AMERICA'S FAVORITE PASTA is an opinion. See Opposer's packaging and the decision of the 8th Circuit Court of Appeals in American Italian Pasta Company v. New World Pasta Company. Opposer's opinion and use of the trademark AMERICA'S FAVORITE PASTA is based on the long brand heritage of the Mueller's pasta products, its made in America quality, its family tradition of use. (*Webster Declaration of 13 Nov 2002, paragraph 19*)

INTERROGATORY NO. 14

State all facts that support your allegation that Barilla filed its application for the mark BARILLA - AMERICA'S FAVORITE PASTA "with notice and knowledge of the prior rights and use of Opposer's AMERICA'S FAVORITE PASTA Marks in connection with pasta products" and identify any documents sufficient to support such facts.

ANSWER

Objections: overly broad, unduly burdensome, attorney-client and work product. Subject to those objections, Opposer anticipates the development of additional facts concerning Applicant's

knowledge during the course of discovery. At present, Opposer identifies the packaging of Opposer's pasta products and its advertising and promotional materials bearing the mark in response to this interrogatory.

INTERROGATORY NO. 15

State the earliest date that Opposer was aware of Barilla's intent-to-use BARILLA - AMERICA'S FAVORITE PASTA in connection with pasta products.

ANSWER

Opposer objects to this interrogatory as calling for the provision of information privileged from discovery by the attorney-client privilege and as attorney work product. Subject to the foregoing, Opposer was aware of the intent-to-use application of Applicant for BARILLA - AMERICA'S FAVORITE PASTA on November 13, 2002.

INTERROGATORY NO. 16

Identify all persons who participated in any way in the preparation of the answers or responses to these Interrogatories and state specifically, with reference to Interrogatory numbers, the area of participation of each such person.

ANSWER

Other than assistance provided to Opposer by Opposer's counsel and staff, Drew Lericos.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 12 of 15

2004-Oct-14 04:45pm From-

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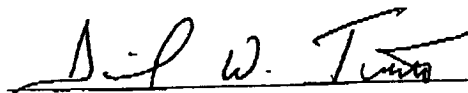
VERIFICATION

STATE OF _____)
) ss.
COUNTY OF _____)

Dan Trott hereby certifies that he is Executive Vice President Sales & Marketing of Opposer, and that he understands that he is answering these interrogatories on behalf of Opposer, and that the answers given to the above and foregoing interrogatories are true and correct to the best of his knowledge and belief.

Dated: _____

10/14/04


DAN TROTT

The foregoing Responses to Interrogatories were subscribed and sworn to before me this
_____ day of _____, 2004

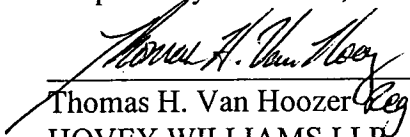
Notary PublicMy Commission Expires:

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 13 of 15

AS TO THE OBJECTIONS:

Dated: October 14, 2004

Respectfully submitted,

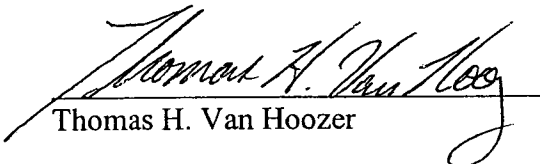

Thomas H. Van Hoozer *Reg No. 32,761*
HOVEY WILLIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 14 of 15

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2004, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S FIRST SET OF INTERROGATORIES by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005


Thomas H. Van Hoozer

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A7 Page 15 of 15

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**AMERICAN ITALIAN PASTA
COMPANY**

Opposer,

v.

**BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI,**

Applicant.

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**OPPOSITION NO.: 91-161,373
SERIAL NO.: 78//136,703**

OPPOSER'S ANSWERS TO APPLICANT'S SECOND SET OF INTERROGATORIES

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Opposer American Italian Pasta Company ("Opposer") makes the following responses and objections to Applicant's Second Set of Interrogatories.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these interrogatories was conducted with the necessary degree of diligence to locate responsive information and documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its answers to Applicant's interrogatories as may be necessary.

GENERAL OBJECTIONS

1. Opposer objects to Applicant's interrogatories to the extent that they seek information subject to the attorney-client privilege or other privilege.
2. Opposer objects to each interrogatory to the extent it seeks information which have been prepared in anticipation of litigation or for trial, or otherwise subject to protection under the work product doctrine or Rule 26(b)(3) of the Federal Rules of Civil Procedure.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A8 Page 1 of 5

3. Opposer's answers to these interrogatories are subject to the General Objections as well as the objections made to each specific interrogatory. To extent these General Objections are applicable, they are incorporated by reference into each of Opposer's answers and by responding to certain of Applicant's interrogatories, Opposer does not waive these General Objections or any specific objections to particular requests. Opposer will produce requested information where otherwise appropriate. However, Opposer reserves its right to object to the admission of such information or documents at trial.

4. Opposer objects to each interrogatory to the extent that it calls for a legal conclusion.

5. Opposer objects to the production of information equally available to Applicant from third party sources.

6. Opposer objects to the Applicant's interrogatories on the grounds that they are overly broad and unduly burdensome, seek information and documents which are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent they seek to impose obligations on Opposer beyond those required by the Trademark Trial and Appeal Board Rules and Federal Rules of Civil Procedure.

7. Opposer's responses to these interrogatories do not waive any attorney-client privilege or work product protection, nor does it waive any right to challenge the use of any such information at trial or other proceeding in this action.

8. Opposer objects to these interrogatories to the extent that they seek confidential commercial information and trade secrets of Opposer or its predecessors in interest. Upon entry of a suitable protective order, Opposer will supplement its answers as appropriate.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

2

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A8 Page 2 of 5

RESPONSES TO APPLICANT'S SECOND SET OF INTERROGATORIES

INTERROGATORY NO. 17

State the ordinary meaning of the word "favorite."

ANSWER

Subject to the general objections set forth above, "markedly popular."

INTERROGATORY NO. 18

State the meaning of the word "favorite" in the context of Opposer's Mark.

ANSWER

Subject to the general objections set forth above, "markedly popular especially over an extended period of time."

INTERROGATORY NO. 19

With respect to any of Opposer's answers to Applicant's First and Second Set of Requests for Admission that were anything other than an unqualified admission, state in detail all facts and identify all documents and materials that support the answer.

ANSWER

Opposer objects to this Interrogatory as being overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of material evidence. Opposer further objects to this Interrogatory as it purports to impose upon it an obligation to investigate and discover information and materials from third parties or sources equally accessible to Applicant. Opposer further objects to this Interrogatory as it purports to seek information protected from discovery as attorney work-product or under the attorney client privilege. Subject to the foregoing, Opposer responds by indicating that it has denied those requests for admission either because they are untrue, or because

2005-Mar-29 12:07pm From-

T-330 P.005/011 F-700

they seek legal conclusions, or because they seek opinions rather than facts, or because Opposer does not have sufficient information to admit or deny the request, and therefore denies the same.

AMERICAN ITALIAN PASTA COMPANY

By J. S. WhiteDate: March 29, 2005

they seek legal conclusions, or because they seek opinions rather than facts, or because Opposer does not have sufficient information to admit or deny the request, and therefore denies the same.

AMERICAN ITALIAN PASTA COMPANY

By _____

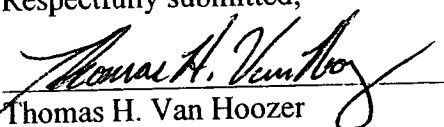
Tim Webster, President and Chief Executive Officer

Date: _____

As to the objections.

Dated: March 29, 2004

Respectfully submitted,


Thomas H. Van Hoozer
Hovey Williams LLP
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of March, 2005, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S SECOND SET OF INTERROGATORIES by causing a true copy thereof to be sent via first class, postage paid, to the following:

G. Franklin Rothwell
Robert H. Cameron
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005


Thomas H. Van Hoozer

American Italian Pasta Co. v. Barilla

4

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j) (3) (I)

Exhibit A8 Page 5 of 5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA)	
COMPANY,)	
Opposer)	
)	
v.)	Opposition No. 91-161,373
)	
BARILLA G. E R. FRATELLI-SOCIETA)	
PER AZIONI)	
Applicant.)	

**OPPOSER'S ANSWERS TO APPLICANT'S THIRD
SET OF INTERROGATORIES**

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Opposer American Italian Pasta Company ("Opposer") makes the following responses and objections to Applicant's Third Set of Interrogatories.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these interrogatories was conducted with the necessary degree of diligence to locate responsive information and documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its answers to Applicant's interrogatories as may be necessary.

GENERAL OBJECTIONS

Plaintiff incorporates its General Objections as set for in its Answers to Defendant's First Set of Interrogatories.

INTERROGATORIES

Interrogatory No. 20

State by years, or for periods less than on year, by month any periods during which Opposer and/or its predecessor in interest(s) failed to use any mark or designation

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A9 Page 1 of 9

consisting of or including the phrase "AMERICA'S FAVORITE PASTA" in connection with the advertising, marketing, distribution, or promotion of pasta products.

Response: Plaintiff objects to this Interrogatory as argumentative, as well as Applicant's characterization that Opposer may have "failed" to do anything. The most frequently understood meaning of the word "failed" implies that Opposer "underwent failure" in attempting to use its mark. See *The American Heritage Dictionary of the English Language* (4th ed.) 2000; *Cambridge International Dictionary of English* (2002) (defining failed as to have not succeeded). Opposer also objects to this interrogatory on the basis that it is vague and ambiguous, and in that it is unlimited in time and its geographic scope extends beyond the United States. Subject to those objections, and the General Objections, Opposer states it has not failed to use any mark or designation consisting of or including the phrase "AMERICA'S FAVORITE PASTA" in connection with the advertising, marketing, distribution, or promotion of pasta products commencing with the period beginning September 1997.

Interrogatory No. 21

For each of Applicant's Fourth Set of Request for Admissions, served concurrently herewith, to which Opposer responds with anything other than an unqualified admission, state all facts and either identify by bates (sic) number all documents previously produced, or produce all documents not yet produced, supporting Opposer's failure to admit the requested information.

Response: Opposer objects to this interrogatory because it is vague and ambiguous. The interrogatory is argumentative by employing the term "failure." The interrogatory is also objectionable because it is an improper device to seek production of documents. Opposer further objects to the interrogatory because it is unduly burdensome to require Opposer to identify the requested documents by Bates numbers and to set forth each fact negating the contention or document previously produced supporting Opposer's denials. In addition, Opposer incorporates its objections to the Request for Admissions as if fully set forth herein. Subject to these objections, and the General Objection, Opposer provides a further response as follows:

With respect to Request for Admission No. 21, Opposer references Applicant's discovery responses (or lack thereof) in addition to the multiple applications and their prosecution histories, as well as Applicant's failure to demonstrate any bona fide intention to use the Opposed Mark. Such conduct establishes that Applicant lacks and has lacked the bona fide intention, as required by law, to use the Opposed Mark in the ordinary course of trade. Rather, Applicant merely intends and has intended to reserve a right in the mark, which is insufficient at law. Additionally,

Applicant has failed to produce any documents or other evidence that it has ever had a good faith intent to use the Opposed Mark in a real and legitimate commercial sense, such as market research. The deadline to produce such evidence has expired. Further, and based on Barilla's knowledge of Opposer's trademark use of the Opposed Mark, it is evidence that Barilla has no bona fide intent to use the mark on its goods, but to interfere with Opposer's ability to use its trademark.

With respect to Request for Admission No. 22, see the foregoing response. With respect to Request for Admission Nos. 24, 25, 26 and 27, please see the pleadings in the referenced litigation previously produced. With respect to Request for Admission Nos. 35 and 36. See the documents previously produced by Opposer. With respect to Request No. 37, the request is denied because Opposer knows of no such persons.

Interrogatory No. 22

Identify by bates (sic) numbers all documents previously produced which Opposer contends consist of marketing studies, surveys or scientific reports directly reflecting U.S. consumer recognition of the phrase "AMERICA'S FAVORITE PASTA" as a phrase identifying source in Opposer.

Response: Opposer objects on the basis that the interrogatory is vague and ambiguous. Opposer further objects to the interrogatory because it is unduly burdensome to require Opposer to identify the requested documents by Bates numbers. Subject to those objections, and the General Objections, Opposer identifies A5347 through A5611, A10827, 10828, 10829, 10830, 10831, and A10078 through A10099.

Interrogatory No. 23

Identify by bates (sic) numbers all documents previously produced which Opposer contends directly reflect U.S. consumer recognition of the phrase "AMERICA'S FAVORITE PASTA" as a phrase identifying source in Opposer.

Response: Opposer objects on the basis that the interrogatory is vague and ambiguous. Opposer further objects to the interrogatory because it is unduly burdensome to require Opposer to identify the requested documents by Bates numbers. Subject to those

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A9 Page 3 of 9

objections, and the General Objections, Opposer refers Applicant to the documents previously produced, for example, Bates No. 10078-10099, and all documents showing Opposer's advertising, promotional materials and packaging. Opposer identifies Bates Nos. A5000-A5046, A5048, A5052 - A5073, A5308 -A5311, A5313 - A5318, A5320 - A5334, A5612 - A5691, A5958 - A5964, A6177 - A6179, A6185, A6190, A7220 - A7304, A7693 - A7868, A7893 - 7899, A10832 - 10863, U0001 - U0765, U0791 - U1422, U1460 - U2071, U2086 - U2087, U2108 - U2599, U2601 - U3049, U3062 - U4180, and U4335 - 4569.

Interrogatory No. 24

Identify by bates (sic) numbers all documents previously produced which Opposer contends reflect that Applicant lacked or lacks a bona fide intention to use the Opposer Mark in commerce [sic]

Response: Opposer objects to this Interrogatory as vague and ambiguous. The interrogatory is incomprehensible and contains errors. Opposer further objects to the interrogatory because it is unduly burdensome to require Opposer to identify the requested documents by Bates numbers. Lastly, it is not known if Applicant lacked or lacks a bona fide intention to use the Opposer Mark, as the "Opposer Mark" is undefined or which mark of Opposer Applicant is questioning in this interrogatory.

Interrogatory No. 25

Identify all persons upon whose statements or testimony Opposer may rely to prove that Applicant lacks or lacked a bona fide intention to use the Opposed Mark.

Response: Subject to the General Objections, Applicant states Opposer, Applicant and Robert H. Cameron.

Interrogatory No. 26

State facts sufficient for Applicant to determine the alleged facts forming the evidentiary basis for Opposer's claim that Applicant lacks or lacked a bona fide intention to use the Opposed Mark (e.g. multiple applications).

Response: Opposer objects to this interrogatory as it is vague and ambiguous. The request is incomprehensible and is inherently contradictory by requesting "facts" to "determine alleged facts." Nonetheless, and subject to the General Objections, and pursuant to Fed. R. Civ. P. 33, Opposer objects to this interrogatory in that it requires Opposer to speculate as to what facts would be sufficient for Applicant to determine alleged facts, and calls for attorney work product. Opposer states that Applicant may refer to the documents previously produced by Applicant and Opposer, to Application Serial Nos. 78/136708, 78/136706, and 78/0136701, the prosecution histories of those applications, and the pleadings of record, including discovery responses to determine facts which it may find beneficial for its understanding.

Interrogatory No. 27

State whether Opposer has communicated with any person, other than Applicant's outside counsel, presently or previously employed by or affiliated with Applicant regarding whether or not Applicant possessed or possesses a bona fide intent to use the Opposed Mark. Provide the dates on which such communications occurred, the person whom Opposer communicated and the facts allegedly disclosed by the interviewee during that communication.

Response: Opposer objects to this interrogatory as vague and ambiguous. Subject to the General Objections, Opposer states that is has not communication with any person, other than Applicant's outside counsel, presently or previously employed by or affiliated with Applicant regarding whether or not Applicant possessed or possesses a bona fide intent to use the Opposed Mark, such communications being ethically prohibited.

Interrogatory No. 28

Identify all persons upon whose statements or testimony Opposer relied to plead that Applicant lacks or lack a bona fide intention to use the Opposed Mark.

Response: Subject to the General Objections, Opposer states that it has not yet identified any person upon whose statements or testimony Opposer relied to plead that Applicant lacks or lack a bona fide intention to use the Opposed Mark. On information and belief, such persons may include Robert H. Cameron, G. Franklin Rothwell and Carla C. Calcagno.

Interrogatory No. 29

Identify all persons whom Opposer contends can provide factual testimony that Applicant lacks or lacked a bona fide intention to use the Opposed Mark [sic]

Response: Opposer objects to this Interrogatory as vague and ambiguous because the request appears incomplete and was not closed with a period. Subject to the General Objections, Opposer states that it has not yet identified any persons whom Opposer contends can provide factual testimony that Applicant lacks or lacked a bona fide intention to use the Opposed Mark, but, on information and belief, such persons may include Robert H. Cameron, G. Franklin Rothwell and Carla C. Calcagno.

Interrogatory No. 30

Identify all persons whom Opposer has interviewed and whom Opposer contends can provide factual testimony that Applicant lacks or lacked a bona fide intention to use the Opposed Mark [sic]

Response: Opposer objects to this Interrogatory as vague and ambiguous because the request appears incomplete and was not closed with a period. Opposer also objects to this interrogatory as seeking information privileged as attorney work product and under the attorney client privilege. Subject to the General Objections, Opposer states that no persons are identified in response to this interrogatory.

Interrogatory No. 31

Identify all persons of whom Opposer is aware who are knowledgeable as to whether or not Applicant lacks or lacked a bona fide intention to use the Opposed Mark.

Response: Subject to the General Objections, Applicant states Opposer and Applicant and, on information and belief, Robert H. Cameron, G. Franklin Rothwell and Carla C. Calcagno.

Interrogatory No. 32

Identify all persons of whom Opposer is aware outside of any person presently employed by Applicant that Opposer contends is knowledgeable that Applicant lacks or lack a bona fide intention to use the Opposed Mark [sic]

Response: Opposer objects to this Interrogatory as vague and ambiguous because the request appears incomplete and was not closed with a period. It is also vague and ambiguous because it is nonsensical and incomprehensible. Subject to the General Objections, Opposer states, on information and belief, Robert H. Cameron, Paul Davis, G. Franklin Rothwell and Carla C. Calcagno.

Interrogatory No. 33

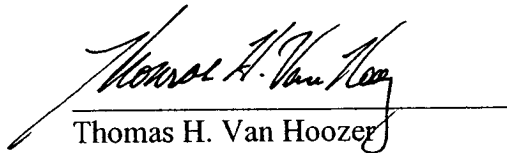
Identify all persons upon whose statements or testimony Opposer relied to plead that Applicant lacks or lack [sic] a bona fide intention to use the Opposed Mark [sic]

Response: Opposer objects to this Interrogatory as vague and ambiguous because the request appears incomplete and was not closed with a period. The interrogatory is also vague and ambiguous because it is nonsensical and incomprehensible. Opposer also objects to this interrogatory as seeking information privileged as attorney work product and under the attorney client privilege.

Dated: December 6, 2005

As to the objections,

HOVEY WILLIAMS LLP



Thomas H. Van Hoozer
Cheryl L. Burbach
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
Telephone: (816) 474-9050
Facsimile: (816) 474-9057

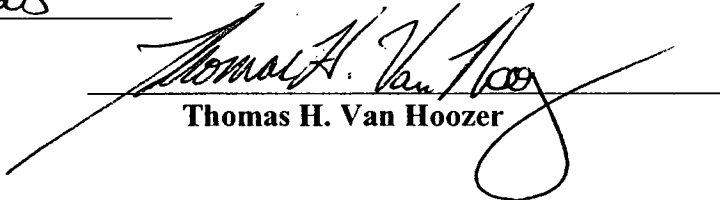
ATTORNEYS FOR OPPOSER
AMERICAN ITALIAN PASTA
COMPANY

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

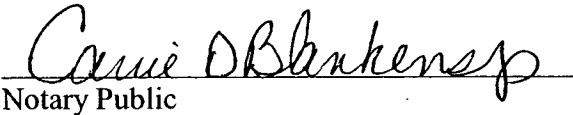
Thomas H. Van Hoozer hereby certifies that he is Opposer's attorney and authorized representative, and that he understands that he is answering these interrogatories on behalf of Opposer, and that the answers given to the above and foregoing interrogatories are true and correct to the best of his knowledge and belief.

Dated: December 6, 2005



Thomas H. Van Hoozer

The foregoing Responses to Third Set of Interrogatories were subscribed and sworn to before me this 6th day of December, 2005.



Notary Public

My Commission Expires:

July 18, 2008



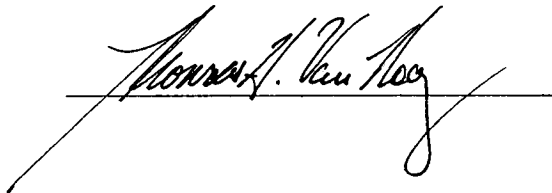
CARRIE D. BLANKENSHIP
Cass County
My Commission Expires
July 18, 2008

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A9 Page 8 of 9

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2005, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S THIRD SET OF INTERROGATORIES by causing a true copy thereof to be sent via first class, postage paid, to the following:

Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

A handwritten signature in cursive script, reading "Thomas J. Van Nooy", is written over a horizontal line.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A9 Page 9 of 9

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AMERICAN ITALIAN PASTA
COMPANY,

Opposer

v.

BARILLA G. E R. FRATELLI-SOCIETA
PER AZIONI

Applicant.

Opposition No. 91-161,373

**OPPOSER'S ANSWERS TO APPLICANT'S FOURTH
SET OF INTERROGATORIES**

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure,
Opposer American Italian Pasta Company ("Opposer") makes the following responses and
objections to Applicant's Fourth Set of Interrogatories.

PRELIMINARY STATEMENT

Opposer's search for information and documentation in connection with these interrogatories
was conducted with the necessary degree of diligence to locate responsive information and
documents. Opposer reserves the right to revise, correct, add to, supplement, or clarify any of its
answers to Applicant's interrogatories as may be necessary.

GENERAL OBJECTIONS

Plaintiff incorporates its General Objections as set forth in its Answers to Defendant's
First Set of Interrogatories.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A10 Page 1 of 8

Interrogatory No. 34

For each calendar year since 1997 for which Oppose claims use of the mark AMERICA'S FAVORITE PASTA, state the dollar amount expended specifically promoting the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. The monies expended by Opposer in its promotional activities are not relevant. Opposer further objects to the Request as confusing, vague and ambiguous, in that it purports to request information concerning promotion of the phrase; Opposer does not promote phrases. It promotes products. The interrogatory is objected to as not being limited to activities directed to the United States.

Interrogatory No. 35

For each calendar year since 1997 for which Oppose claims use of the mark AMERICA'S FAVORITE PASTA, state by dollar and unit volume the number of Mueller's brand pasta packages sold that displayed the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, the Request is objectionable to the extent it seeks information already provided in documents produced by Opposer. Opposer objects to the interrogatory as unduly burdensome. Opposer objects to the interrogatory as not being limited to activities directed to the United States.

Interrogatory No. 36

For each calendar year since 1997 for which Oppose claims use of the mark AMERICA'S FAVORITE PASTA, state the percentage of packages of Mueller's brand pasta sold that displayed the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this interrogatory as unduly burdensome, and duplicative to the extent it seeks information already provided in documents by Opposer. The Request is also objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence, as the percentage of use in relation to another of Opposer's marks is not at issue in this proceeding, and the interrogatory is not limited to activities directed to the United States. Therefore, the Request is not relevant.

Interrogatory No. 37

Foe (sic) each calendar year prior to 1997 for which Oppose claims use of the mark AMERICA'S FAVORITE PASTA, state the dollar amount expended promoting the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was

set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer objects to this Request as being unduly burdensome. Additionally, the Request is objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. The amount of monies expended by Opposer in promotional activities of a phrase are not relevant and the interrogatory further is not limited to activities directed to the United States. Therefore, the Request is not relevant.

Interrogatory No. 38

For each calendar year prior to 1997 for which Opposer claims use of the mark AMERICA'S FAVORITE PASTA, state by dollar and unit volume the number of Mueller's brand pasta packages sold that displayed the phrase AMERICA'S FAVORITE PASTA.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, the Request is objectionable as being unduly burdensome. Further, the interrogatory is objectionable in seeking information concerning activities not limited to activities of Opposer directed to the United States.

Interrogatory No. 39

For each calendar year prior to 1997 for which Opposer claims use of the mark AMERICA'S FAVORITE PASTA, state the percentage of packages of Mueller's brand pasta sold that displayed the phrase AMERICA'S FAVORITE PASTA.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT'S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A10 Page 4 of 8

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Additionally, Opposer objects to this interrogatory on the basis that it is unduly burdensome. The Request is also objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. The percentage of use in relation to another of Opposer’s marks is not at issue in this proceeding, and the interrogatory is not limited to activities directed to the United States. Therefore, the Request is not relevant.

Interrogatory No. 40

State by Bates number(s), the documents Opposer has produced in this case that list the amount of monies Oppose has spent to specifically promote the phrase AMERICA’S FAVORITE PASTA, apart from the term Mueller’s.

Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that “[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . .” In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has “no obligation to respond to an untimely request for discovery.” TBMP § 403.02.

Opposer filed its brief in opposition to Applicant’s motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant’s motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer further objects to this Request in that it is unduly burdensome in that the documents requested to be identified are equally available to Applicant. Additionally, the Request is also objectionable because it seeks information not reasonably calculated to lead to the discovery of admissible evidence. The amount of monies expended by Opposer in promotional activities of a phrase are not relevant, and Opposer does not promote phrases, but, rather, products. Furthermore, the interrogatory is not limited to the activities of Opposer directed to the United States. Therefore, the Request is not relevant.

American Italian Pasta Co. v. Barilla

Opposition No. 91/161,373

APPLICANT’S NOTICE OF RELIANCE

UNDER RULE 2.120(j)(3)(I)

Exhibit A10 Page 5 of 8

Interrogatory No. 41

Identify by title of publication, or by radio or television station call sign and geographic location, and by dates of publication, all nationally circulated advertisements in which Opposer or another on Opposer's behalf has advertised or promoted the phrase AMERICA'S FAVORITE PASTA.

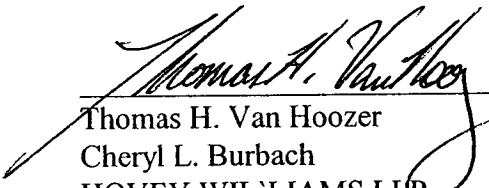
Response: Opposer objects due to the untimely service of this discovery request. 37 C.F.R. §2.120(a) provides that "[d]iscovery depositions must be taken, and interrogatories, requests for production of documents and things, and requests for admission must be served, on or before the closing date of the discovery period as original set or as reset. . . ." In this proceeding, discovery was set to close on November 1, 2005. Applicant served these requests on November 3, 2005. Thus, Opposer has "no obligation to respond to an untimely request for discovery." TBMP § 403.02.

Opposer filed its brief in opposition to Applicant's motion to extend the discovery deadline. Thus, if the Trademark Trial and Appeal Board, in its discretion, grants Applicant's motion, Opposer reserves the right to more fully object and/or answer to the discovery requests.

Opposer objects to this Request as unduly Burdensome. Opposer also objects on the basis that the Request seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Opposer does not promote phrases; rather, it promotes products. Opposer also objects in that the geographic scope of advertisement on a "nationally circulated" basis is not in issue in this case, and, therefore, the interrogatory is irrelevant.

AMERICAN ITALIAN PASTA COMPANY

Dated: December 8, 2005


Thomas H. Van Hoozer
Cheryl L. Burbach
HOVEY WIL LIAMS LLP
2405 Grand Boulevard, Suite 400
Kansas City, MO 64108
Phone: (816) 474-9050
Fax: (816) 474-9057

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A10 Page 6 of 8

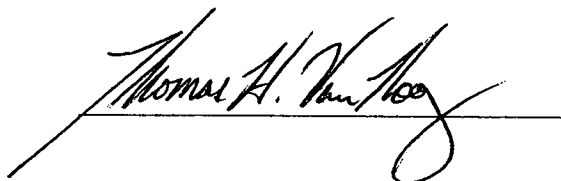
Attorneys for the Opposer

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A10 Page 7 of 8

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2005, I served the foregoing OPPOSER'S ANSWERS TO APPLICANT'S FOURTH SET OF INTERROGATORIES by causing a true copy thereof to be sent via first class, postage paid, to the following:

Carla C. Calcagno
ROTHWELL, FIGG, ERNST & MANBECK P.C.
1425 K Street, NW, Suite 800
Washington, DC 20005

A handwritten signature in black ink, reading "Thomas H. Van Nooy", is written over a horizontal line.

American Italian Pasta Co. v. Barilla
Opposition No. 91/161,373
APPLICANT'S NOTICE OF RELIANCE
UNDER RULE 2.120(j)(3)(I)
Exhibit A10 Page 8 of 8